

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ROY A. DURHAM,	:	Case No. 1:13-cv-226
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Karen L. Litkovitz
vs.	:	
	:	
WARDEN MICHAEL SHEETS, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DECISION AND ENTRY: (1) ADOPTING THE REPORT AND  
RECOMMENDATIONS OF THE MAGISTRATE JUDGE (Doc. 69);  
(2) OVERRULING PLAINTIFF'S OBJECTIONS (Doc. 74);  
(3) DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A THIRD  
AMENDED COMPLAINT (Doc. 68); AND  
(4) DISMISSING THE UNSERVED DEFENDANTS NAMED IN PLAINTIFF'S  
SECOND AMENDED COMPLAINT (Doc. 28)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on November 26, 2014, submitted a Report and Recommendations. (Doc. 69). Plaintiff filed timely Objections to the Report and Recommendations. (Doc. 74).<sup>1</sup>

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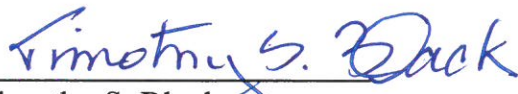
<sup>1</sup> Plaintiff argues that exceptional circumstances justify granting him leave to file a third amended complaint. He also requests another opportunity to submit the summons forms and copies of his second amended complaint for the unserved Defendants. The Court finds that these arguments are not well taken. As detailed in the Report and Recommendations, the Court has afforded Plaintiff ample opportunity to pursue his claims. Plaintiff filed his second amended complaint on September 9, 2013 (Doc. 28), but over one year later twenty-one Defendants remain unserved because he failed to comply with multiple Orders to file summons forms and copies of the second amended complaint. (Docs. 54, 60, 66). The records reflects that Plaintiff has not diligently prosecuted this action and granting further leave to amend would unduly prejudice Defendants.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly:

1. The Report and Recommendations (Doc. 69) is **ADOPTED**;
2. Plaintiff's Objections (Doc. 74) are **OVERRULED**;
3. Plaintiff's Motion for Leave to File a Third Amended Complaint (Doc. 68) is **DENIED**; and
4. The unserved Defendants named in Plaintiff's Second Amended Complaint (Doc. 28) are **DISMISSED** without prejudice for failure to effect service of process.<sup>2</sup>

**IT IS SO ORDERED.**

Date: 12/31/14

  
Timothy S. Black  
United States District Judge

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Plaintiff also objects to the Magistrate Judge's Order granting him a 30-day extension of time to file his memorandum contra Defendants' Second Motion for Judgment on the Pleadings instead of an indefinite extension so that he could obtain discovery. This involves a non-dispositive matter. Therefore, the Court applies the "clearly erroneous" or "contrary to law" standard of review set forth in Rule 72(a). A court will overturn a Magistrate Judge's legal conclusions only where those conclusions "contradict or ignore applicable precepts of law, as found in the Constitution, statutes, or case precedent." *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992). Plaintiff has not satisfied this burden and merely repeats his argument that he cannot respond to Defendants' motion for judgment on the pleadings without obtaining discovery. Further, Plaintiff fails to demonstrate how additional factual development is necessary to respond to Defendants' argument that he failed to exhaust his administrative remedies before filing suit. (Doc. 65).

<sup>2</sup> The Court incorporates the Magistrate Judge's recitation of the twenty-one unserved Defendants. (Doc. 54 at 5; Doc. 69 at 2). Accordingly, Rob Jeffreys, Warden Michael Sheets, Justin Johnson, Joseph Little, Adam Kessler, and Justin Reece are the only remaining Defendants in this action.